IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.633 OF 2005

Pramila Chadha ..Petitioner

Vs.

Municipal Corporation of
Gr.Mumbai & Ors. ..Respondents

...

Mr. A.P.Mundergi, Advocate for Petitioner
Ms. S.V.Gajare, A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JULY 11,2005

P.C.

1. Leave to amend granted. Amendment to be carried forthwith.

2. Heard the learned advocate for the Petitioner and the learned A.P.P. for the State.

3. The petitioner is seeking quashing of process issued by the learned M.M., 42nd Court, Dadar Mumbai in C.C.No. 3572/MF/2001. In the said case process is issued under Section 390 r.w. 471 of the B.M.C.Act. The petitioner had preferred

application before the learned Magistrate for recalling of process. The learned Magistrate mainly in view of the decision of the Apex Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. [2004(4) Mh.L.J.274]** and on one other ground, rejected the application of the petitioner. Being aggrieved by the said order, the petitioner has approached this Court. In the decision of the Supreme Court in the case of Adalat Prasad, it has been held that a Magistrate cannot recall process. In view of this decision, the learned Magistrate has rightly not recalled the process.

3. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary revision will be preferred within five weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of five weeks from today. The learned advocate for the petitioner states that five days advance notice will be given to the respondent-corporation in respect of filing revision. The learned advocate for the respondent-Corporation, fairly states that no objection will be raised in respect of delay in filing the revision.

5. It is made clear that the said revision will be preferred in respect of the order of the Magistrate issuing process against the petitioner and it will not be in respect of order dated 15.11.2004 of the learned Magistrate whereby the application of the petitioner for recall of process came to be rejected.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]